



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

MAR 14 2001

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Use of Corporate Auditing Agreements for Audit Policy Disclosures

FROM: Eric Schaeffer  
Director of the Office of Regulatory Enforcement

TO: Addressees

EPA encourages companies with multiple facilities to take advantage of the Agency's Audit Policy, especially through use of corporate auditing agreements (for details see the December 1999 *Audit Policy Update* Special Issue, "Corporate-Wide Audit Agreements: An Effective Approach for Companies to Improve Environmental Compliance"). Corporate auditing agreements allow companies to plan a corporate-wide audit with advanced understanding between the company and EPA regarding schedules for conducting the audit. EPA has entered into corporate auditing agreements under various statutes and with an array of conditions. Based on our experiences, we recommend that audit duration and scope be key considerations in developing such agreements.

Normally, the timely disclosure period for violations is twenty-one days from discovery. Companies that audit can continue to take advantage of that disclosure period; however, companies that plan more comprehensive audits and are interested in global resolution of discovered violations can reach agreement with EPA regarding audit, disclosure and correction schedules in advance of the audit.

An agreement under the Audit Policy may be documented through either an exchange of letters or a bilateral agreement (signed by an appropriate EPA official). Because of the resources required to develop an agreement, we generally recommend that bilateral agreements be used only for the situation in which an audit is not expected to be completed within a six-month period (although the disclosure and correction of violations is likely to be required at shorter intervals) and/or the audit will require complex analysis and review by the company and EPA (e.g., a Clean Air Act New Source Review audit).

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In general, for audits that are expected to be completed within six months, an exchange of letters may suffice. To meet the conditions of the Audit Policy, letters should identify (1) the breadth of the audit (i.e., regulatory requirement being considered), (2) the identity and location of affected facilities, and (3) the date by which a final disclosure report containing the violations discovered will be reported to EPA. A primary consideration in approving a proposed auditing schedule is fairness among competitors (e.g., have similarly situated companies performed the work in less than the proposed time?).

For more lengthy or complex audits, a bilateral agreement should be considered. Such agreements negotiated to date under the policy have generally included all of the following elements:

- Exclusion from waivers of any criminal liability.
- Waiver of right to a judicial or administrative hearing on any law/fact issue arising with respect to a violation disclosed, corrected and settled under the agreement.
- Compliance with the agreement and final settlement shall not be a defense to any action by EPA with respect to any violations not disclosed under the agreement.
- Entity neither admits nor denies that reporting and mitigating constitutes a violation.
- Statutory/regulatory scope of the audit.
- How audit is to be carried out/protocols.
- Period of time/performance to be covered by audit.
- Facilities covered (number and location).
- Duration of audit/schedule for deliverables (e.g., periodic disclosure reports due within 30 days of discovery; summary report; etc.).
- Compliance schedule.
- Description of mitigation required.
- Certification by corporate officer that final audit/disclosure report is true, accurate and complete.
- Exclusion for types of or specific violations that do/will not meet the Audit Policy requirements; or an express provision of inclusion for certain otherwise ineligible violations to be resolved with \$0 GBP.
- Modifications to the agreement.
- Mechanism for final settlement.
- One settlement for all violations disclosed (eligible and ineligible).
- Handling confidentiality claims and the public release of disclosure information.
- Communication and interaction with affected states, if appropriate.
- Mitigation of GBP for violations disclosed in accordance with the agreement and the Audit Policy.
- Reservation of rights to enforce against those violations not properly identified, reported, or mitigated under the agreement.
- Penalty payment provisions.
- In some circumstances, penalties may be stipulated for the following:
  - penalties for certain ineligible violations;

- penalties for failure to comply with agreement;
- collection of economic benefit, and stipulation to amount, if appropriate;
- maximum liability for stipulated penalties or total settlement.

Please be aware that all correspondence and documents related to an auditing agreement are treated as confidential (see EPA's "Confidentiality and Information Received Under Agency's Self-Disclosure Policy" (1997) for additional information).

The attached auditing agreement (not confidential) is one example of a bilateral agreement. For additional information, please contact Leslie Jones at (202) 564-5123 or consult the Audit Policy Handbook that was distributed to each Regional Audit Policy contact.

Attachment

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